

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

DONALD DEAN COOK)
6223 Lakewood Street)
San Diego, California 92122)

CPA Certificate No. 40170)

Respondent)
_____)

No. AC-93-12

OAH No. L-9408194

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Accountancy as the Decision in the above-entitled matter.

This Decision shall become effective on January 7, 1995.

IT IS SO ORDERED December 8, 1994.

BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

BY: 

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	No. 03541 AC-93-12
Against:)	
)	OAH No. L-9408194
DONALD DEAN COOK)	
6223 Lakewood Street)	
San Diego, California 92122)	
)	
Accountant Certificate No. 40170)	
)	
Respondent.)	
)	
)	

PROPOSED DECISION

On October 4, 1994, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Anthony M. Summers, Deputy Attorney General, represented the complainant.

Respondent Donald Dean Cook was not present although he was properly served with the Notice of Hearing. Respondent is presently incarcerated at the Centinela State Prison, Imperial, California. His attorney, Robert D. Frank, wrote a letter to Mr. Summers dated October 3, 1994, in which Mr. Frank indicated he would not appear at the hearing, and requested a continuance pending a decision by the United States District Court regarding a petition for writ of habeas corpus filed by respondent. The request for continuance was denied and the matter proceeded as a default pursuant to Government Code section 11520.

Evidence was received, the record was closed upon receipt on October 6, 1994, of an updated License History (Exhibit No. 3) and an original Certification of Costs (Exhibit No. 9), and the matter was submitted.

FINDINGS OF FACT

I

On December 17, 1992, Carol Sigmann, Executive Officer of the Board of Accountancy of the State of California

(hereafter, "Board"), filed this accusation in her official capacity. Respondent filed a timely Notice of Defense dated January 29, 1993.

II

On June 8, 1984, the Board issued certificate number 40170 (Certified Public Accountant) to respondent Donald Dean Cook. The license expired on January 1, 1992.

III

On December 5, 1991, in the case of People v. Donald Dean Cook, San Diego County Superior Court No. CR122699, respondent was convicted by a jury of 32 counts of grand theft; 19 counts were for amounts taken in excess of \$25,000.00, and 10 counts were for amounts taken exceeding \$100,000.00 (Penal Code sections 487, subd. 1, 12022.6, subds. (a) and (b)). Respondent was sentenced to serve a total of 10 years in state prison, but was allowed to remain free on bail pending appeal.

Respondent appealed his conviction to the Court of Appeal, Fourth Appellate District, Division One. In an unpublished decision dated April 22, 1994, the court affirmed the conviction. The remittitur was filed on April 29, 1992, and the sentence was imposed on June 6, 1994. The conviction is now final.

IV

The Court of Appeal determined respondent's conduct constituted theft in 31 counts under theories of embezzlement and false pretenses, and theft in one count under a theory of embezzlement. The acts occurred between August 4, 1989, and April 30, 1990. The Court summarized the evidence as follows:

"Cook's business San Diego Realty Exchange, Inc (SDRE) solicited and entered into written agreements with taxpayers who sought to effect delayed tax-deferred exchanges of their investment properties. Each contracting taxpayer ('exchanger') agreed to pay SDRE a fee to facilitate the exchange by acting as an independent third party principal (or 'accommodator') by receiving title to the property an exchanger wanted to transfer (the 'transfer' or 'downleg' property), conveying the downleg property to a buyer, receiving the downleg sales proceeds, holding those proceeds for the exchanger until the exchanger designated a new

property (the 'exchange' or 'upleg' property), using the proceeds or their equivalent to acquire the upleg property, and conveying the upleg property to the exchanger. The exchanger needed an accommodator in order to comply with federal tax law requirements that the exchanger not have any control over the property or proceeds between the downleg and delayed upleg portions of the transaction. However, Cook diverted the downleg sales proceeds from SDRE to himself and his other business entities, thus leaving SDRE without funds to close the transactions' upleg portions."

Respondent's conduct as described by the Court of Appeal is clearly and substantially related to the qualifications, functions, and duties of a certified public accountant.

V

The reasonable costs of investigation and prosecution of this matter incurred by the Board are \$2,063.58.

DETERMINATION OF ISSUES

I

Cause to impose discipline against respondent's license for violating Business and Professions Code section 5100(a) was established by Findings III and IV.

II

Cause to require respondent to pay the Board's reasonable costs of investigation and prosecution of the case was established by Finding V.

ORDER

I

Certificate number 40170 (Certified Public Accountant) issued by the Board to respondent Donald Dean Cook is revoked.

/

/

/

/

/

/

/

/

II

Respondent is hereby ordered to pay \$2,063.58 to the Board for its reasonable costs of investigation and prosecution of this matter within 120 days of the effective date of this decision.

Dated: October 13, 1994

A handwritten signature in cursive script, appearing to read 'Alan S. Meth', is written over a horizontal line.

ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ANTHONY M. SUMMERS,
Supervising Deputy Attorney General,
3 State Bar No. 35221
Department of Justice
4 110 West A Street, Suite 700
Post Office Box 85266
5 San Diego, California 92186-5266
Telephone: (619) 237-7590
6
7 Attorneys for Complainant
8
9

10 **BEFORE THE**
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation) NO. 03541
13 Against:) AC-93-12
DONALD DEAN COOK) ACCUSATION
14 6223 Lakewood Street)
San Diego, CA 92122)
15 Accountant Certificate No.)
16 40170)
Respondent.)
17

18 Complainant Carol B. Sigmann, as cause for disciplinary
19 action, alleges:

20 1. Complainant is the Executive Officer of the
21 California State Board of Accountancy ("Accountancy") and makes
22 and files this accusation solely in her official capacity.

23 LICENSE STATUS

24 2. On or about June 8, 1984, Accountant Certificate
25 No. 40170 was issued by the Accountancy Board to DONALD DEAN COOK
26 ("respondent"). The certificate was in effect from its date of
27 issuance until January 1, 1992, when it expired.

1 STATUTES

2 3. This accusation is made in reference to the
3 following statutes of the California Business and Professions
4 Code ("Code"):

5 a. Section 5100(a) provides that the Board may
6 revoke, suspend or refuse to renew any permit or certificate
7 issued by the Board, or may censure the holder of any such
8 permit or certificate for unprofessional conduct, which
9 includes conviction of any crime substantially related to
10 the qualifications, functions and duties of a certified
11 public accountant.

12 b. Section 5107 provides, in part, that the Board
13 may request the administrative law judge, as part of the
14 proposed decision in a disciplinary proceeding, to direct
15 any holder of a permit or certificate found in violation of
16 section 5100 (a), (b), (c), (h), (i) or (j), to pay to the
17 Board all reasonable costs of investigation and prosecution
18 of the case, including, but not limited to, attorney's fees.

19 c. Section 118(b) provides that the suspension,
20 expiration, or forfeiture by operation of law of a license
21 issued by the Board shall not, during any period in which it
22 may be renewed, restored, reissued, or reinstated, deprive
23 the Board of its authority to institute or continue a
24 disciplinary proceeding against the licensee or to enter an
25 order suspending or revoking the license or otherwise taking
26 disciplinary action against the licensee.

27 d. Section 5070.6 allows the renewal of an

1 expired certificate at any time within five years after its
2 expiration.

3 FACTS

4 4. Respondent DONALD DEAN COOK is subject to
5 disciplinary action on account of the following:

6 a. On or about June 10, 1992, in the case of
7 People v. Cook, San Diego Superior Court number CR122699,
8 respondent was convicted of 32 counts of violating Penal
9 Code section 487, grand theft.

10 b. The crimes of which respondent was convicted
11 are substantially related to the qualifications, functions and
12 duties of a certified public accountant.

13 5. As a result of the conduct described in paragraph 4
14 above, respondent committed unprofessional conduct in violation
15 of Code section 5100(a).

16 WHEREFORE, complainant requests that a hearing be held
17 on the matters alleged herein, and that following the hearing,
18 the Board issue a decision:

19 1. Revoking or suspending Accountant Certificate
20 Number 40170, heretofore issued to respondent DONALD DEAN
21 COOK;

22 2. Requiring respondent to pay the Board's costs, as
23 provided in section 5107;

24 ///


25 ///

26 ///

27 ///

3. Taking such other and further action as the Board deems appropriate to protect the public health, safety and welfare.

DATED: December 17, 1992


Carol B. Sigmann
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant